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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JUN 13 2012

BY \_\_\_\_\_ FILED 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE  
OF THE STATE BAR OF ARIZONA**

**In the Matter of Members of the  
State Bar of Arizona,**

**ANDREW P. THOMAS, Bar No. 014069,  
LISA M. AUBUCHON, Bar No. 013141, and  
RACHEL R. ALEXANDER, Bar No. 020092**

**RESPONSE TO RESPONDENT  
ALEXANDER'S MOTION FOR  
EXTENSION OF TIME**

**Case No. PDJ 2011-9002**

**I. Introduction**

Independent Bar Counsel ("IBC") objects to Respondent Rachel Alexander's Motion for Extension of Time ("Motion") on the grounds that there is no good cause for an extension under AR-CAP Rules 3 and 5(b). IBC did not stipulate to an extension of time for Respondent Alexander to file her opening brief in the appeal of the underlying case.

**II. No Good Cause Exists**

AR-CAP Rule 3 provides that an appellate court may, upon motion, for good cause shown, suspend the requirements or provisions of any of the appellate rules in a case, and may order proceedings in accordance with its direction.

AR-CAP Rule 5(b) provides that the time for doing any of the acts provided for in the appellate rules, by order of the court, or by any applicable statute, may be extended by the court upon stipulation or upon motion, for good cause shown.

In her Motion, Respondent Alexander alleges that her pending Complaint for Special Action and Declaratory Relief ("Declaratory Action") in the Superior Court of Arizona shows good cause for an extension of time. The Declaratory Action is attached hereto as *Exhibit A*. On the contrary, the

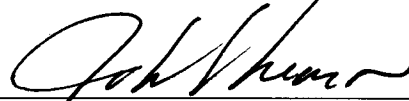
1 Declaratory Action is not good cause because it is an action separate from these disciplinary  
2 proceedings. The dispute over whether Maricopa County will pay for Respondent Alexander's  
3 appeal may take months or even years to resolve, and such delay does not further the public policy  
4 of attorney discipline. The purpose of attorney discipline is to protect the public. *In re Fioramonti*,  
5 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). The Hearing Panel found that Respondent  
6 Alexander committed serious misconduct that warranted a lengthy suspension. Although she is  
7 granted a stay during the pendency of her appeal, allowing Respondent Alexander an extension of  
8 time while her Declaratory Action is litigated for an indefinite time would be counter to protecting  
9 the public. Such delay is not justified.

10 Finally, it is evident from the Declaratory Action that Respondent Alexander does not  
11 appreciate the public policy of attorney discipline. While referring to the Hearing Panel's findings as  
12 false assertions and implying that she was unfairly treated in the process, Respondent Alexander  
13 makes no mention of how an indefinite delay in her appeal will not harm the public.

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15 **IV. Conclusion**

16 Because there is no good cause shown, Respondent Alexander's Motion should be denied.

17  
18 **RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of June 12, 2012.

19 

20 JOHN S. GLEASON, Independent Bar Counsel  
21 JAMES S. SUDLER  
22 COLORADO SUPREME COURT  
23 OFFICE OF ATTORNEY REGULATION COUNSEL  
24 1560 Broadway, Suite 1800  
25 Denver, CO 80202  
26 303-866-6400

1       **ORIGINAL** of the foregoing Response to Alexander's Motion for Extension of Time e-  
2 mailed and sent by U.S. Mail this 12<sup>th</sup> day of June, 2012 to:

3       Laura Hopkins, Disciplinary Clerk  
4       Office of the Presiding Disciplinary Judge  
5       1510 West Washington, Suite 102  
6       Phoenix, AZ 85007-3231

7       **COPIES** of the foregoing Response to Alexander's Motion for Extension of Time e-mailed  
8 and sent by U.S. Mail this 12<sup>th</sup> day of June, 2012 to:

9       Rachel R. Alexander  
10       5110 N. 44th Street, Suite 200L  
11       Phoenix, Arizona 85018

12 By

  
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1 Rachel R. Alexander (020092)  
2 **ALEXANDER BANKRUPTCY LAW FIRM, PLLC**  
3 5110 N. 44<sup>th</sup> St., Suite 200L  
4 Phoenix, Arizona 85018  
5 (623) 792-8743  
6 E-mail: rachel@alexanderbankruptcylawfirm.com  
7 Plaintiff Pro Se

8 **SUPERIOR COURT OF ARIZONA**

9 **MARICOPA COUNTY**

10 RACHEL ALEXANDER,

11 Plaintiff,

12 v.

13 MARICOPA COUNTY, a political  
14 subdivision of the State of Arizona;  
15 MARY ROSE WILCOX, DON  
16 STAPLEY, ANDREW KUNASEK,  
17 MAX WILSON, and FULTON BROCK,  
18 in their capacities as MEMBERS OF  
19 THE MARICOPA COUNTY BOARD  
20 OF SUPERVISORS; DAVID SMITH, in  
21 his official capacity as MARICOPA  
22 COUNTY MANAGER; BRAD KEOGH  
23 in his official capacity as ACTING  
24 DIRECTOR OF MARICOPA COUNTY  
25 RISK MANAGEMENT; BILL  
26 MONTGOMERY in his official capacity  
27 as MARICOPA COUNTY ATTORNEY,

28 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR SPECIAL  
ACTION AND DECLARATORY  
RELIEF**

**DEMAND FOR JURY TRIAL**

(Request for Speedy Hearing Pursuant to  
A.R.C.P., Rule 57)

The Plaintiff, Rachel Alexander respectfully submits her Complaint for Special Action and Declaratory Relief, pursuant to the Arizona Rules of Procedure for Special Actions, as follows:

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1. JURISDICTION AND VENUE

1. This Court has jurisdiction to hear and determine this Special Action complaint and to grant the relief requested by virtue of Article VI, Section 18 of the Arizona Constitution and Rule 4, Rules of Procedure for Special Actions. Venue in Maricopa County Superior Court is proper for this Complaint for Special Action and Declaratory Relief pursuant to A.R.S. § 12-1831.

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2. PARTIES

2. Plaintiff was a merit-protected deputy county attorney with the Maricopa County Attorney's Office.
3. Defendant Maricopa County Board of Supervisors ("Supervisors") is a county agency authorized to handle County affairs pursuant to A.R.S. § 11-201 et seq., including powers over monies expended by the County. Defendant Supervisors are Mary Rose Wilcox, Don Stapley, Andrew Kunasek, Max Wilson and Fulton Brock.
4. Defendant David Smith is the former Maricopa County Manager, appointed by the Supervisors to manage the county's business.
5. Defendant Maricopa County Risk Management is the county agency charged with defending the County from lawsuits and other actions affecting its purses. Brad Keogh is the Acting Director of Risk Management.
6. Defendant Maricopa County Attorney Bill Montgomery is the prosecutor for the County, authorized to conduct legal work for the County pursuant to A.R.S. § 11-531.

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3. STATEMENT OF MATERIAL FACTS AND LAW

7. The Plaintiff contends that she was denied her rights as a merit employee when the County refused to fund her appeal of a Bar disciplinary action which ordered the suspension of her license for six months and one day.
8. By not funding her appeal, this resulted in a breach of contract with The Declaration of Trust for Maricopa County, Arizona, Self-Insured Risk Trust Fund ("County

1 Trust”), which provides in section 2.2.2.7 that the County will “pay all costs of  
2 investigations and legal defense of claims, including, but not limited to, the  
3 reasonable attorneys' fees and reasonable costs arising out of a disciplinary or  
4 licensure proceeding before a professional regulatory body, upon written approval  
5 from trustees prior to payment.”

- 6 9. The Plaintiff was a merit employee with the Maricopa County Attorney's Office  
7 when then County Manager David Smith filed a bar complaint against her, former  
8 Maricopa County Andrew Thomas, and another Deputy County Attorney, Lisa  
9 Aubuchon in 2009.
- 10 10. The County paid for her counsel, Scott Zwillinger, to represent her in the bar  
11 disciplinary proceeding.
- 12 11. There was no reservation of rights clause in the County's agreement with Mr.  
13 Zwillinger.
- 14 12. Based on conversations Mr. Zwillinger had during the proceedings with Rocky  
15 Armfield, director of Risk Management during the majority of the Bar disciplinary  
16 proceedings, Plaintiff believed the County would pay for her appeal.
- 17 13. During the Bar proceedings, Plaintiff received three offers to settle from Bar  
18 counsel, including one offer to take some extra Continuing Legal Education courses.  
19 Plaintiff relied upon her attorney's conversation with Risk Management that she  
20 would have funding for an appeal when she decided not to accept any of those  
21 settlement offers.
- 22 14. *Waterfall, Economidis, Caldwell, Hanshaw & Villamana, P.C. v. Pima County*, 207  
23 Ariz. 455 (Ariz. App. 2004) presented a similar situation, analyzing whether the  
24 County is responsible to pay the full legal costs of representation for a Deputy  
25 County Attorney in a Bar disciplinary proceeding. There, the court found that oral  
26 assurances outside of the County's agreement with the Deputy County Attorney's  
27 counsel were admissible and should be reconciled with the counsel's written  
28 contract if possible. In that case, the written contract called for a flat payment of

1 \$25,000 so the oral assurances could not be combined with the contract. That case  
2 can be distinguished from the situation here, since there was no fixed amount set in  
3 the contract for Plaintiff's legal representation.

4 15. On April 10, 2012, Plaintiff was notified by the Bar disciplinary panel that her Bar  
5 license would be suspended for six months and one day, beginning May 10, 2012.

6 16. On April 16, 2012, Mr. Zwillinger was notified by Brad Keogh, Acting Director of  
7 Risk Management that the County would not be paying for Ms. Alexander's appeal,  
8 just a week before the deadline to appeal.

9 17. On April 17, 2011, County Attorney Bill Montgomery declared that the Board of  
10 Supervisors was within its authority to decide not to authorize "monies to cover  
11 attorney fees for the appeals of the Bar disciplinary cases."

12 18. Plaintiff served the County with a demand letter on April 18, 2012, requesting a  
13 reconsideration of the decision to deny funding her appeal.

14 19. Mr. Keogh responded on April 20, 2012 again denying coverage to Plaintiff.

15 20. Mr. Keogh stated that Section 2.2.4 of the County Trust excluded Plaintiff from  
16 coverage since the County does not have to pay employees' legal expenses if "his or  
17 her action or omission constituted bad faith, gross negligence, and/or willful and  
18 wanton misconduct, or other excluded conduct or circumstances ... in the conduct of  
19 his or her duties."

20 21. The Hearing Panel suspended Plaintiff's Bar license due to her role assisting former  
21 Maricopa County Attorney Andrew Thomas in his efforts to prosecute certain  
22 county officials. Plaintiff was never one of Thomas's high-level advisors, and was  
23 not kept informed of what he was doing throughout the years she worked there other  
24 than what she read in the newspapers. Mr. Thomas came to Plaintiff in December  
25 2009 and asked her to help with some research and writing on a racketeering case  
26 that he had already filed against these officials. Her role basically consisted of some  
27 research and writing as directed by her supervisor Pete Spaw, the office expert on  
28 racketeering cases (who was not prosecuted by the Bar, even though he performed

1 substantially more work on the suit and instructed her on what to do), then she  
2 dismissed the case as instructed by her supervisors. For this the Hearing Panel  
3 suspended Plaintiff's Bar license for six months plus one day.

4 22. The Hearing Panel's decision suspending Plaintiff's license relied upon the assertion  
5 that she had also filed the racketeering complaint, which was a false assertion.

6 23. The County appears to take the position that since the Hearing Panel's decision was  
7 so draconian, Plaintiff falls outside of the coverage; however, based on her  
8 extremely limited role in the proceedings, and the lightness of the Bar disciplinary  
9 counsel's settlement offers during the trial, evidence they thought they had a weak  
10 case against her, there is a very good possibility the Hearing Panel's decision will be  
11 overturned or limited.

12 24. A reasonable person would conclude that the costs of legal defense of claims  
13 includes the costs of appeal.

14 25. A prior director of Risk Management stated that in the past, Risk Management has  
15 always funded similar appeals from Deputy County Attorneys. The Plaintiff is being  
16 singled out for differential treatment by not funding her appeal.

17 26. Those making the decision not to fund the Plaintiff's appeal are the same people  
18 who filed the bar complaint against her beginning all of this.

19 27. Even if the written approval from the trustees (County Supervisors) is interpreted as  
20 discretionary, to refuse to fund the Plaintiff's appeal is at best arbitrary and  
21 capricious, at worst intentionally punitive.

22 28. Plaintiff has suffered immeasurable harm as a result. Her bankruptcy law business  
23 has suffered greatly, since it is difficult to find clients or handle their affairs while  
24 she is working full time to represent herself pro se. The vast amount of negative  
25 media coverage has also devastated her business.

26 29. The Plaintiff requests declaratory relief that the Defendants' actions to deny her  
27 funding for an appeal are improper.  
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4 4. PRAYER FOR RELIEF

5 WHEREFORE, Plaintiff requests that this court accept jurisdiction of this Special Action  
6 and issue an Order:

- 7 a. Declaring that the County breached its contract with Plaintiff and therefore the  
8 County Trust entitles Plaintiff to the cost of legal representation for her appeal;  
9 b. Plaintiff's costs in bringing this action; and  
10 c. Granting Plaintiff such other relief deemed just and proper in the circumstances.

11 Plaintiff further requests the Court speedily determine this, since she is currently without legal  
12 counsel to handle her pending appeal to the Arizona Supreme Court, and her opening brief for  
13 her appeal is due in on June 6, 2012. Due to the presence of controverted questions of fact,  
14 Plaintiff requests a jury trial for all issues triable by jury.

15 DATED this 1st day of June, 2012.

16  
17 ALEXANDER BANKRUPTCY LAW  
18 FIRM, PLLC

19 By: \_\_\_\_\_

20 Rachel R. Alexander  
21 5110 N. 44<sup>th</sup> St., Ste. 200L  
22 Phoenix, Arizona 85018  
23 Plaintiff Pro Se

24 ORIGINAL filed with Clerk of the  
25 Maricopa County Superior Court this 1st  
26 day of June, 2012.

27 COPY of the foregoing mailed this 1st day  
28 of June, 2012 to:

Maricopa County Supervisors  
Mary Rose Wilcox  
Don Stapley  
Andrew Kunasek  
Max Wilson

1 Fulton Brock  
2 Clerk of the Board  
3 301 W. Jefferson, 10<sup>th</sup> floor  
4 Phoenix, AZ 85003

5 David Smith  
6 17934 N 100TH ST  
7 Scottsdale, AZ 85255-2504

8 Maricopa County Risk Management  
9 Brad Keogh, Acting Director  
10 222 North Central Avenue, Suite 1110  
11 Phoenix, Arizona 85004

12 Maricopa County Attorney  
13 Bill Montgomery  
14 301 W. Jefferson, Suite 800  
15 Phoenix, Arizona 85003

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## VERIFICATION

**STATE OF ARIZONA            )**  
**) ss.**  
**County of Maricopa          )**

**RACHEL ALEXANDER**, Plaintiff in the foregoing action, first being duly sworn, deposes and says that she has read the Complaint for Special Action and Declaratory Relief, knows the contents therein to be true to the best of her knowledge, except as to those matters stated therein upon information and belief, and as to such matters, she believes them to be true.

Dated: \_\_\_\_\_

**Rachel Alexander**

**SUBSCRIBED AND SWORN** to before me this 1st day of June, 2012.

\_\_\_\_\_  
Notary Public

**My Commission Expires:**